



GOVERNOR'S OFFICE OF
BUDGET AND PROGRAM PLANNING

Fiscal Note 2017 Biennium

Bill # HB0370

Title: Generally revise death penalty laws

Primary Sponsor: Moore, David (Doc)

Status: As Introduced

- Significant Local Gov Impact
 Needs to be included in HB 2
 Technical Concerns
 Included in the Executive Budget
 Significant Long-Term Impacts
 Dedicated Revenue Form Attached

FISCAL SUMMARY

	<u>FY 2016 Difference</u>	<u>FY 2017 Difference</u>	<u>FY 2018 Difference</u>	<u>FY 2019 Difference</u>
Expenditures:				
General Fund	(\$24,343)	\$75,777	\$76,914	\$78,067
Revenue:				
General Fund	\$0	\$0	\$0	\$0
Net Impact-General Fund Balance:	<u>\$24,343</u>	<u>(\$75,777)</u>	<u>(\$76,914)</u>	<u>(\$78,067)</u>

Description of fiscal impact: This bill repeals the death penalty. The fiscal impact if this bill were enacted would be very difficult to quantify in an ongoing way due to the unpredictability of capital cases. Cost calculations do not include the legal costs incurred by the state for funds and staff time expended on defending the legality of lethal injection.

FISCAL ANALYSIS

Assumptions:

Department of Corrections

1. There are currently two inmates on death row at Montana State Prison. The average number of years spent on death row for those two inmates is 27.14.
2. There are currently two inmates who have a stay of execution until a lawsuit pertaining to the legalities of lethal injection is settled. The lawsuit is estimated to be resolved in FY 2016. All appeals are exhausted so, once the lawsuit is resolved, it is assumed both executions could take place in FY 2016.
3. The estimated cost of an execution is \$49,500 based on the last execution. For two executions, a cost of \$99,000 could be incurred in FY 2016 under the current law. Although the department is not specifically budgeted for this expenses, with a change in law, the FY 2016 cost of \$99,000 would not be incurred.

4. The current annual cost to house an inmate is \$37,329. Cost of housing two inmates for an additional year is \$74,658.
5. FY 2016 will show a savings of \$24,342, which is the difference between the cost of two executions and the annual cost of housing two inmates.
6. Starting in FY 2017 the cost of housing the inmates includes an inflationary rate of 1.5% per year.

Office of Public Defender (OPD)

7. In FY 2012, OPD had four cases in which the State filed notice of its intent to seek imposition of the death penalty if the defendant was convicted. Two of these cases were filed in FY 2012 and the other two were ongoing from a previous fiscal year. The cost of these cases in FY 2012 totaled \$397,963.
8. In FY 2013, OPD had five cases it treated as death penalty cases. One of these cases was filed in FY 2011, two were filed in FY 2012, one was a case in which the State filed notice of intent to seek the death penalty upon conviction in FY 2013, and one was a case filed in FY 2013 in which the prosecutor stated his intent to consider seeking the death penalty. The cost of these cases in FY 2013 was \$1,102,345. The agency had a total of \$500,000 one-time-only funds which were used and the balance was covered by a supplemental appropriation.
9. In FY 2014, OPD had four cases where the State recommended the death penalty. All four of these cases were ongoing from a previous fiscal year. The cost of these cases in FY 2014 was \$611,859. The agency had a total of \$500,000 one-time-only funding, \$250,000 of which was transferred from FY 2015 to FY 2014. The agency used non-capital case funding to cover the remaining costs.
10. There is no funding requested in the 2017 Biennium Executive Budget Request for capital cases.
11. In general, death penalty cases are more complex, labor intensive, and cost more than the other types of cases OPD handles.
12. OPD occasionally must utilize the services of private attorneys to provide representation in death penalty cases. The Public Defender Commission authorizes payment of \$120 per hour to private attorneys in these cases. In certain circumstances, the Commission may authorize a higher rate in a given case.
13. There is no funding requested in the 2017 Biennium Executive Budget Request for capital cases.
14. Given the dynamic nature of workloads in the agency, the overall impact of the elimination of the death penalty is unknown.

Department of Justice

15. There was no information provided regarding the fiscal impact for the cost of litigating death penalty appeals so none has been shown. The agency acknowledges staff attorney time involved on death penalty appeals can be considerably more costly than “normal” cases as they do require more staff attorney time.

	<u>FY 2016 Difference</u>	<u>FY 2017 Difference</u>	<u>FY 2018 Difference</u>	<u>FY 2019 Difference</u>
<u>Fiscal Impact:</u>				
<u>Expenditures:</u>				
Operating Expenses	(\$24,343)	\$75,777	\$76,914	\$78,067
TOTAL Expenditures	(\$24,343)	\$75,777	\$76,914	\$78,067
<u>Funding of Expenditures:</u>				
General Fund (01)	(\$24,343)	\$75,777	\$76,914	\$78,067
TOTAL Funding of Exp.	(\$24,343)	\$75,777	\$76,914	\$78,067
<u>Revenues:</u>				
General Fund (01)	\$0	\$0	\$0	\$0
TOTAL Revenues	\$0	\$0	\$0	\$0
<u>Net Impact to Fund Balance (Revenue minus Funding of Expenditures):</u>				
General Fund (01)	\$24,343	(\$75,777)	(\$76,914)	(\$78,067)

Long-Term Impacts:

1. The average length of time from sentencing to execution is 21 years.
2. The average life expectancy for males is currently 76.07 years.
3. The average age of the two inmates on death row is 53.49.
4. If the death penalty were abolished, the Department of Corrections would incur the cost of incarcerating two individuals for an average of 21.9 years (life expectancy less age at incarceration of current death row inmates less time already served).
5. The general fund cost for the incarceration of a male inmate is approximately \$37,328.55 per year.
6. The cost of incarcerating two inmates for 21.9 years at \$37,328.55 per year would be \$1,637,230.

Sponsor's Initials

Date

Budget Director's Initials

Date